

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos.4833/1983 to 4840/1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT AGRO INDUSTRIES CORP. .

Versus

AHMEDABAD MUNICIPAL CORP . .

Appearance:

MR NS SHETH for Petitioner-Gujarat Agro Industries Corporation

MR MG NAGARKAR for Respondent-Ahmedabad Municipal Corporation

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/04/99

COMMON ORAL JUDGEMENT

This batch of eight Special Civil Applications

based on identical facts involving common questions are directed against the common judgment and order dated 18th March, 1983 read with the order dated 22nd April, 1981 passed in each of the Municipal Valuation Appeals by the Chief Judge, Small Causes Court and, therefore, we propose to decide all these eight Special Civil Applications by this common judgment and order.

2. The petitioner-Gujarat Agro Industries Corporation claims to be the owner of the land and buildings located within the city of Ahmedabad. For the purpose of brevity, we are narrating the facts from Special Civil Application No.4833 of 1983. The property in question was assessed for the property tax under the B.P.M.C. Act and as per the assessment made by the Municipal Corporation, notices were issued for the years 1978-79 and 1979-80. The petitioner preferred appeals under sec.406 of the B.P.M.C. Act against the gross rateable values and property taxes determined for the said years by the Municipal Corporation. The petitioner had also filed the petition under Article 226 of the Constitution of India being Special Civil Application No.2194 of 1980 before this Court challenging the constitutional validity of Sec.406(2)(e) of the Act which requires that in case of an appeal against the tax or in the case of an appeal against the rateable value, after a bill for a property tax assessed upon such value has been presented to the assessee, the amount claimed has to be deposed by him with the Commissioner. Several writ petitions of this nature were filed. This High Court, however, by the common judgment and order dated 17th of November, 1980 reported in 21(2) GLR page 300 in the case of Gujarat Agro Industries Corporation Ltd. Vs. Municipal Corporation of the City of Ahmedabad and others dismissed the same. Thereafter, on 11th of December, 1980, the petitioner, i.e. Gujarat Agro Industries Corporation Ltd. filed Special Leave Petitions before the Supreme Court against Gujarat High Court common judgment and order dated 17-11-80 in Special Civil Applications Nos.794, 1000, 1005, 2187, 2190, 2191, 2192 and 2194 of 1980. The Supreme Court on 12-12-1980 passed the following order in Special Leave Petitions (Civil) Nos.10705 to 10713 of 1980.

"ORDER

The Gujarat Agro Industries (P) Ltd. etc. etc.

Versus

The Municipal Corporation of the City of Ahmedabad and Ors. (with Appln. for Ex-parte

Stay).

12-12-1980. These matters were called on for hearing today.

Upon hearing counsel for the court special leave to appeal in all the matters and granted stay on condition that seventy five per cent of the tax is deposited with the Municipal Commissioner, within 2 months from today. On such deposit being made by the Appeals to be heard and disposed of.

Sd/-

COURT MASTER."

3. The petitioner failed to deposit the amount of the tax at 75 per cent with the Municipal Corporation within two months from 12th December, 1980, i.e. within the time stipulated under the Supreme Court's order dated 12-12-1980 as a condition for stay. Whereas the petitioner Gujarat Agro Industries Ltd. failed to deposit the amount of 75 per cent within the period of 2 months from 12-12-1980 as granted by the Supreme Court, the Chief Judge, Small Causes Court proceeded to dismissed all the 8 Municipal Valuation Appeals and orders dismissing these Municipal Valuation Appeals Nos. 813/78, 814/78, 815/78, 1109/78, 1815/78, 1943/78, 772/80 and 1428/80 were passed on 22/4/1981.

4. The case of the petitioners is that when their counsel came to know about all these orders dated 22-4-1981, on 10-4-1982 he applied for the certified copy of the order dated 22-4-1981 on the same day, i.e. 10-4-1982 and such certified copy was delivered on 14-6-1982. Thereupon the petitioner moved restoration applications on 13-7-1982 before Chief Judge of the Small Causes Court at Ahmedabad for restoration of the said Municipal Valuation Appeals. These restoration applications were also dismissed by the Small Causes Court on 18-3-1983. It has been further given out by Mr.N.S.Sheth that the 75 per cent amount had been deposited in each of the matters, of course, after the period granted by the Supreme Court and, therefore, at the most the Gujarat Agro Industries Corporation could be denied the benefit of stay order passed by Supreme Court but the appeals could not be dismissed by the Small Causes Court on this ground alone. Therefore, appeals should be restored and the same may be heard and decided on merits.

5. Mr.Sheth has raised the contention that at no

stage the petitioner has received the audience on merits and the case has not been considered on merits at any stage and these Special Civil Applications against the order dated 18-3-1983 read with the order dated 22-4-1981 as passed by the Small Causes Court were filed in August, 1983 before this Court. It has been given out by Mr.Nagarkar appearing for respondent, that the Special Leave Petitions which were filed before the Supreme Court as mentioned in para 2 of this order became Civil Appeals Nos.3012-20/80 on leave being granted by the Supreme Court and out of these Civil Appeals, Civil Appeals Nos.3018-19/80 were dismissed as withdrawn on 16-2-1999.

6. We have heard learned counsel for both the sides.

We find that so far as the appeals before the Supreme Court are concerned, they were directed only against the validity of sec.406(2)(e) of the B.P.M.C.Act and the order which was passed by the Supreme Court on 12-12-1980 was not the final order. It was the order by which stay was granted on the condition of depositing 75 per cent of the tax within two months. In this order, the Supreme Court had also ordered that-

"on such deposit being made, the appeals should be heard and disposed of".

Therefore, even if the petitioners had failed to deposit the amount within the time of 2 months granted by the Supreme Court, all that could be said is that the petitioners could not take advantage of the stay order passed by the Supreme Court because they failed to comply with the condition imposed by the Supreme Court while granting the stay order, nevertheless, the fact remains that the appeals were to be heard and disposed of on the deposit being made. It appears that the Small Causes Court proceeded to dispose of the appeals on 22-4-1981 merely because the petitioners failed to comply with the requirement of depositing 75 per cent of the amount, it was a condition precedent or a prerequisite for the stay order, i.e. stay against the recovery of the assessed amount of tax. In this regard, we have also gone through a detailed affidavit dated 12-7-1982 which has been filed by one Shri Kapinjal M. Desai, who was appearing on behalf of the petitioner before the Small Causes Court. In our considered opinion, the Chief Judge of the Small Causes Court failed to comprehend the correct import of the Supreme Court's order dated 12-12-1980 and dismissed the appeals on the ground that the petitioner failed to deposit the amount within time as directed by the Supreme Court. The only effect of the failure to deposit the amount could be that the stay granted by the Supreme

Court could not be operative, but it was never meant by the Supreme Court that the appeals pending before Small Causes Court must be immediately dismissed on the said failure. Be that as it may, the fact remains that the Small Causes Court dismissed the appeals on this ground alone without considering the same on merits, while the Gujarat Agro Industries Corporation could still deposit the amount of 75 per cent by praying before it the permissible concession upto 25 per cent of the due amount of tax. It is settled that the Small Causes Court while hearing the appeals under sec.406 can entertain the appeals by granting the latitude upto 25 per cent so as to require the deposit of the tax to the extent of 75 per cent. In other words, if 75 per cent of the amount is permitted to be deposited, the appeal may be entertained by the Small Causes Court and the proceedings may go ahead. In case the 75 per cent amount is permitted to be deposited, the appeals cannot be dismissed straightforwardly and they have to be heard and decided on merits. It further appears that the civil appeals which were pending before the Supreme Court have been got dismissed as withdrawn either because the validity of sec.406(2)(c) has been upheld or because these Special Civil Applications have been filed before this Court and the same are pending since 1983 and 75 per cent of the amount has been deposited in Small Causes Court. We find that in such a fact situation, when the statement at Bar is made by Mr.N.S.Sheth appearing on behalf of the Gujarat Agro Industries Corporation that 75 per cent of the amount was deposited, the petitioner could have been permitted to be heard on merits. It is very clear that at no stage, the petitioners have been heard on merits and now when there is no reason to disbelieve the fact with regard to the deposit of the 75 per cent of the amount and the same has not been disputed by Mr.Nagarkar for respondent - it will be in consonance with the ends of justice to allow the petitioners to have a hearing on merits in the appeals preferred by it before the Small Causes Court.

7. In the backdrop of the facts and circumstances as aforesaid, we find that the order dated 18-3-1983 whereby the petitioners' applications for restoration of the appeals were dismissed, was not justified and so also, the order dated 22-4-1981 passed in each of the appeals dismissing the same on the ground of the failure to deposit the amount. Accordingly, the common judgment and order dated 18-3-1983 in Civil Applications passed by the Small Causes Court whereby the restoration applications were rejected and the orders dated 22-4-1981 passed in each of the eight Municipal Valuation Appeals Nos.

813/78, 814/78, 815/78, 1109/78, 1815/78, 1943/78, 772/80 and 1428/80 dismissing the appeals deserve to be quashed and set aside and the same are hereby quashed and set aside. The matters are remanded back to the concerned Small Causes Court for hearing the same after verification of the actual deposit to the extent of 75 per cent in each case and if the amount has been deposited as stated, the concerned Small Causes Court shall proceed to hear and decide the concerned Municipal Valuation Appeals Nos.813/78, 814/78, 815/78, 1109/78, 1815/78, 1943/78, 772/80 and 1428/80 on merits in accordance with law after giving notice to both the sides with regard to the date of hearing. In case it is found by the concerned Small Causes Court that the due amount of 75 per cent has not been deposited as stated above, the earlier orders dated 22-4-1981 and 18-3-1983 shall stand. It is expected that since the basic dispute relates to the assessment years 1978-79 and 1979-80 and the matters are taken up for hearing in the remanded proceedings concerned Small Causes Court shall give priority to the hearing of these appeals and shall hear the decide the same on merits in accordance with law within the shortest possible period, but in no case later than a period of six months from the date the certified copy of this order is produced before the concerned Small Causes Court by any of the parties. All these 8 Special Civil Applications are allowed in the terms as aforesaid and Rule is also made absolute accordingly. No order as to costs.

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